In the Supreme Court of the United States

OCTOBER TERM, 1965

No.

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT

OPINION BELOW

The order and opinion of the district court dismissing the information (Appendix, *infra*, pp. 8–11; R. 6–9) is not reported.

JURISDICTION

The order of the district court dismissing the information on the ground that it does not state an offense under 33 U.S.C. 407 was entered on March 26, 1965. Notice of appeal to this Court was filed in the district court on Monday, April 26, 1965. The jurisdiction of this Court to review, on direct appeal, a judgment dismissing an information because of a construction of the statute on which it is founded is conferred by the 18 U.S.C. 3731.

778-881—65

STATUTES INVOLVED

33 U.S.C. 407 provides in pertinent part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever * * * into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * *.

QUESTION PRESENTED

Whether respondent's discharge of valuable gasoline into navigable waters through a valve unintentionally left open violated 33 U.S.C. 407.

STATEMENT

An information under 33 U.S.C. 407, filed in the United States District Court for the Middle District of Florida, alleged that respondent did cause, suffer and procure to be discharged into the St. Johns River from its oil discharge terminal at Jacksonville, Florida "refuse matter" consisting of 100 octane aviation gasoline (R. 1; pp. 11–12, *infra*). Respondent moved to dismiss on the ground that the information failed to charge an offense (R. 2). A stipulation of fact, entered into solely for the purpose of the motion to dismiss, stated that employees of Standard Oil Company repaired and cleaned an 8-inch line connecting one of its bulk storage tanks with its dock facilities; that the

line was refilled with 100 octane aviation gasoline then stored in the bulk storage tank; and that, because the main shut-off valve at the dock-side end of the line had been unintentionally left open by the employees, approximately 300 gallons of the gasoline spilled out onto the dock and into the St. Johns River (R. 3–5). The district court dismissed the information on the ground that the accidental discharge of valuable and usable gasoline does not constitute discharge of "refuse matter" within the meaning of the statute.

THE QUESTION IS SUBSTANTIAL

The district court's construction of 33 U.S.C. 407 distinguishes between the discharge into navigable waters of commodities which are "valuable" or "usable" and those which are "valueless" or "useless." We believe that this distinction is contrary to the statutory purpose and not required by its language. It creates uncertainty in enforcement of the statute and renders its application questionable in instances involving the negligent discharge of petroleum products—a particular hazard to navigation.

1. The evident purposes for which 33 U.S.C. 407 and the penalty provisions of Sections 411 and 412 were enacted were to prevent the pollution of navigable waters and to protect navigation. If those purposes are to be achieved, the discharge into navigable waters of any foreign material—whether or not it is valuable to the person or corporation responsible for the discharge—must fall within the reach of the statute. The conduct prohibited demonstrates Congress' intent to sweep broadly across negligent as well as willful acts;

the statute subjects to a penalty anyone who "cause[s], suffer[s], or procure[s]" the specified discharge or deposit, without regard to that party's intention.[1] The statutory description of the sort of material which is encompassed within the prohibition should also be liberally construed to achieve the goals which Congress sought to realize. Since foreign substances which are desired by those responsible for their discharge may be hazardous to navigation and may pollute the waters into which they are deposited, and since the value of a usable commodity is not invariably an adequate safeguard against its unintentional discharge into navigable waters (particularly when the value of the commodity may be marginal and the necessary safeguards relatively expensive), the words "any refuse matter of any kind or description whatever" should be construed to cover valuable as well as valueless matter. The district court erred when, in reliance upon *United States* v. *The Delvalle,* 45 F. Supp. 746 (E.D. La.), it interpreted "refuse" as limiting the reach of the statute to matter which is rejected by the party responsible for the discharge. Viewed in context, we submit that "refuse" means any matter which is foreign or alien to the navigable waters and creates the risk of

[1] The stipulation in this case—which was entered into solely for purpose of the motion to dismiss—states that the line was "accidentally" left open by respondent's employees (R. 3). The circumstances of this "accident" strongly point to negligence, and we do not read the stipulation as indicating otherwise. Hence the facts of this case do not involve an unavoidable accident which, we agree, would probably not be encompassed even by the term "suffer."

pollution or danger to navigation which the statute was intented to prevent.[2]

2. Moreover, even if "refuse" is interpreted to refer only to materials which lack value, it seems clear that when, as here, the material loses its value upon escape from storage, it qualifies as "refuse matter" under 33 U.S.C. 407. On this question, the district court decision on which the court below relied conflicts with the decision of the Court of Appeals for the Second Circuit in *United States* v. *Ballard Oil Co. of Hartford,* 195 F. 2d 369. In that case oil was being pumped from the defendant's barge into a tank on shore, and negligent procedure caused an overflow into the river. The court, ruling that the stipulated facts "irrefragably proved an offence under [33 U.S.C. 407]," stated (*id.* at 371):

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed; and for all useful industrial purposes it had ceased to exist. The word, "refuse," does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

It has also been held that valuable fuel oil dumped into Honolulu harbor came within the meaning of "any refuse matter of any kind or description whatever." *United States* v. *Standard Oil Company of California,* 1962 American Maritime Cases 2531 (D.C.

[2] The Oil Pollution Act of 1924, 33 U.S.C. 433–437, does not cover the acts involved here—*i.e.*, pollution in non-tidal waters of the United States or from shore installations.

Hawaii). The Court of Appeals for the Ninth Circuit has also held "oil" to be included within the phrase "any refuse matter of any kind or description whatever." *La Merced,* 84 F. 2d 444. In the present case, the oil became "refuse"—because it was worthless—no later than the time when it left respondent's storage tanks.

3. There is no reason to depart, as the instant case does, from the general principle stated by this Court in *United States* v. *Republic Steel Corp.,* 362 U.S. 482, 489–491:

> * * * § 13 [33 U.S.C. 407] bans the discharge in any navigable water of "any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state." * * * We read the 1899 Act charitably in the light of the purpose to be served. The philosophy of the statement of Mr. Justice Holmes in *New Jersey* v. *New York,* 283 U.S. 336, 342, that "A river is more than an amenity, it is a treasure," forbids a narrow cramped reading either of § 13 [33 U.S.C. 407] or of § 10 [33 U.S.C. 403].

The district court's decision in the present case adopts an unduly narrow construction of the statute and thereby impairs its effectiveness with regard to the hazardous discharge of petroleum products into navigable waters.[2] Such incidents, we are advised by the Corps of Engineers, are relatively frequent.

[2] Respondent recognized the dangers involved here and called the Jacksonville Fire Department and the Coast Guard, which took measures to dissipate the gasoline (R. 4).

CONCLUSION

It is respectfully submitted that probable jurisdiction should be noted.

ARCHIBALD COX,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

JUNE 1965.

APPENDIX

United States District Court, Middle District of Florida, Jacksonville Division

No. 64–298–Cr–J

UNITED STATES OF AMERICA

vs.

STANDARD OIL COMPANY

Order Granting Motion To Dismiss and Dismissing Information

On a prior date the Defendant's Motion to Dismiss (filed December 3, 1964) was argued and submitted by counsel for the respective parties. Both government and defense counsel were agreeable to the Court's considering admitted facts in the disposition of the Motion to Dismiss. At the Court's suggestion, counsel agreed to submit a written stipulation of facts to be considered by the Court solely in connection with the Motion to Dismiss. The case was taken off the trial calendar for March 8 to permit this to be accomplished.

Formal Stipulation, dated March 23, 1965, was filed by counsel for the parties March 25, 1965, and is considered by the Court in disposing of the Motion to Dismiss. The crucial facts now made to appear, in addition to those alleged in the information, are these: By the accidental failure to close a shut-off valve controlling a line connecting the Defendant's bulk storage facilities at its Talleyrand plant, Jacksonville, with its dock facilities, about 300 gallons of 100-octane aviation gasoline was permitted to spill out of the open valve onto the Defendant's dock and from thence into the

St. Johns River, which constitutes navigable waters of the United States. The shut-off valve was closed and the amount of spill was not such as to impede navigation, to damage property, or to cause any fire or explosion. The gasoline so accidentally discharged into the river was undiluted, unspoiled and unadulterated. It was sound, valuable and usable material, in no way damaged or impaired in value prior to the unintentional spillage from the open valve and into the navigable waters. The gasoline was not salvaged and was dissipated into the river by the current thereof and by fire hoses and boat wakes of the Jacksonville Fire Department and the United States Coast Guard.

The Information here is brought under Title 33, U.S.C., Section 407, which states in part:

> It shall not be lawful to throw, discharge, or deposit, or cause, suffer or procure to be thrown, discharged or deposited * * * any refuse matter of any kind or description whatever * * * into any navigable water of the United States.

The Information charges the offense in the statutory language, referring to the substance discharged into the river as "refuse matter". The critical question is whether or not this valuable and entirely usable material may be construed to fall into the description of "refuse matter". This is so since the admitted facts at the least show that the matter was "suffered" to be discharged.

The answer to this question seems to me to be found in *U.S.* v. *The Delvalle,* 45 F. Supp. 746, decided by District (later Circuit) Judge Wayne Borah in the Eastern District of Louisiana of this Circuit June 24, 1942. There, as here, valuable and usable matter (fuel oil in The Delvalle) was accidentally discharged into navigable waters through the failure of a mem-

ber of the ship's crew to completely close the shut-off valve.

Judge Borah's Conclusions of Law were short and are quoted herewith:

Conclusions of Law.

1. The statute in suit is a penal statute and must be strictly construed.

2. The word "refuse" is used in the statute in its adjective sense. Webster's New International Dictionary, 2nd Edition, Unabridged, defines the adjective, "refuse", as follows: "Refused; rejected; thrown aside or left as worthless or of no value; worthless; useless."

3. The oil involved in this proceeding was not refused, rejected, or thrown aside or left as worthless or of no value. It was not worthless nor useless. The accidental discharge of valuable, usable oil, under the circumstances set forth, does not constitute a throwing, discharging, or depositing of refuse matter, and is not a violation of the statute. 33 U.S.C.A. §§ 407, 411 and 412.

4. The libel should be dismissed.

Let a decree be entered accordingly.

Other cases are cited, Second Circuit, which might require a different conclusion. They are: *The Colombo,* 42 F. 2d 211, and *U.S.* v. *Ballard Oil Co. of Hartford, Inc.,* 195 F. 2d 369. The Second Circuit said in the latter case:

> The spilled oil was certainly "refuse matter"; it had escaped from the tank whither it could not be reclaimed; and for all useful industrial purposes it had ceased to exist. The word, "refuse", does not demand that the material must have been deliberately thrown away; it is satisfied by anything which has become waste, however useful it may earlier have been.

Since the question is open in this Circuit, I am constrained to follow Judge Borah's decision which to me seems sound and well reasoned, based as it is upon the dictionary definition of the term "refuse" not otherwise defined in the statute. This is especially so since we deal here with a penal statute which should be narrowly and strictly construed.

In consideration of the foregoing, it is

ORDERED that the Motion to Dismiss of the Defendant Standard Oil Company is granted and the Information is dismissed.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 26th day of March, 1965.

/s/ BRYAN SIMPSON,
Chief Judge, U.S. District Court.

United States District Court, Middle District of Florida, Jacksonville Division

No. 64–298—Cr–J
(33 USC 407)

UNITED STATES OF AMERICA
v.
STANDARD OIL COMPANY

The United States Attorney charges:

COUNT ONE

That on or about November 21, 1963, at Jacksonville, in the Middle District of Florida, Standard Oil Company did discharge and deposit and did cause, suffer and procure to be discharged and deposited from and out of its oil discharge terminal at the Standard Oil docks, 3117 Talleyrand Avenue, refuse matter, that is,

100 octane aviation gasoline, into the St. Johns River, navigable waters of the United States; in violation of Title 33, United States Code, Section 407.

EDWARD F. BOARDMAN,
United States Attorney.

By_____
Assistant United States Attorney.

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